



MEMBER / PUBLIC COMMENT

The State Bar of California

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SUBJECT: Proposed amendment to Rule 1224(a) of the Rules of Practice of the State Bar Court, State Bar of California.

SOURCE: Executive Committee of the State Bar Court.

PLEASE NOTE: Publication for public comment is not, and shall not be construed as, a recommendation or approval by the Executive Committee of the State Bar Court of the materials published.

COMMENT DEADLINE: September 10, 2002

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The full text of the rule with amendments in legislative style is given below. Strikeout (~~Sample~~) indicates that the text is being removed while bold and underlining (**Sample**) indicates new text.

RULE 1224. TRIAL EXHIBITS

(a) Marking of Exhibits: Each proposed exhibit for trial shall be premarked by the parties for identification. **Unless otherwise ordered by the Court, t**~~The State Bar's~~ exhibits shall be numbered; the opposing ~~parties~~**party's** exhibits shall be lettered. The pages of each multiple page exhibit shall be paginated consecutively. Upon request, a party shall make the original or underlying document of any exhibit available for inspection and copying.

(b) Exchange of Exhibits by parties: At least ten days prior to the pretrial conference, the parties shall exchange copies of all exhibits to be offered, and all schedules, summaries, diagrams and charts to be used at the trial. Impeachment and rebuttal exhibits need not be included.

(c) Proposed exhibit list: Together with the pretrial statement, each party shall submit, as a separate document, a proposed exhibit list of all documents and other items to be offered as exhibits at trial, properly described and indexed. Records of prior discipline to be used in aggravation shall not be included in the proposed exhibit list.

The proposed exhibit list must be in a format which is approved by the Court for use as the master exhibit list at trial. An acceptable form is available from the clerk of the Court. The parties may generate their own forms but they must be in the specified format.

No exhibits shall be attached to the pretrial statement or the proposed exhibit list.

Exhibits must be handled in accordance with rule 1224(d).

(d): Lodging and offering of exhibits at trial:

1. Exhibits lodged for use of court: Each party shall lodge one set of its proposed exhibits, marked as described in rule 1224(a) and placed in binder(s) if voluminous. This set of exhibits shall not be filed, but shall be for the use of the Court. This set of exhibits shall be lodged with the pretrial statement, or at the trial, as the trial judge directs.
2. Exhibits formally offered: At trial, each party shall supply to the court clerk original exhibits (previously identified in the proposed exhibit list) as each is identified through stipulation of witnesses. Each exhibit must be top hole punched and, if over 30 pages, top bound. Original exhibits may not be offered in binders. These exhibits will become part of the official court record.
3. Use of exhibits by witnesses: The parties must have a copy of each exhibit for the use of the witness(es) separate from that offered to the court clerk. Counsel are responsible for removing (and, if applicable, recycling) this extra set of exhibits.

No exhibit may be referred to during any trial proceeding unless opposing counsel has had an opportunity to examine it. This includes newly offered impeaching or rebuttal evidence.

(e) Withdrawn or Denied Exhibits: No proposed exhibit which is withdrawn or not offered will become part of the official record. Such exhibits shall be returned to the party upon request. If an exhibit's admission is denied at trial, the exhibit shall be so marked and remain part of the official court record.

(f) Exhibits Judicially Noticed: If a party wishes the Court to take judicial notice of any document which is properly subject to such notice, it shall provide copies of the document together with the proposed exhibits, in accordance with the procedures set forth in this rule.

When a document is judicially noticed rather than admitted, it shall be so marked and

remain part of the official court record.

(g) Failure to Comply: Failure to comply with this rule without good cause may constitute grounds for such orders as the Court deems proper, including but not limited to the exclusion of exhibits from evidence.

Eff. January 1, 1995; revised July 1, 1997; revised January 1, 2001.